HIGH COURT OF CHHATTISGARH: BILASPUR

SB: HON'BLE SHRI SATISH K. AGNIHOTRI, J.

WRIT PETITION NO. 2247 OF 2007

PETITIONER PLAINTIFF	Smt. Dipika Bhatia, aged 39 years, W/o. Shri Naresh Bhatia, R./o. 946-B, Civil Lines, Raipur, District-Raipur, CG.

Versus

RESPONDENT DEFENDANT	State of Chhattisgarh, through the Collector, Raipur, CG.

PRESENT:

Shri Ashish Shrivastava, counsel for the petitioner.
Shri Utkarsh Verma, Dy. Govt. Advocate for the State.

ORAL ORDER
(Passed on 11th April 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner impugns the order dated 11-1-2007 (Annexure P/4) passed by VIIth Civil Judge, Class -II, Raipur, rejecting the application filed under Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure (for short, "the Code") in pending Civil Suit No.1-A/2007and order dated 7-2-2007 (Annexure P/5) passed by Xth Additional District Judge, Raipur, in Misc. Civil Appeal No.1/2007 rejecting the appeal and upholding the order dated 11-1-2007 (Annexure P/4) passed by VIIth Civil Judge, Class -II, Raipur.

2. The facts in nutshell are that the petitioner-plaintiff has filed a civil suit for permanent injunction in the suit property situated at Nazul Land Block No.14, Plot No.2 area 6.600 square feet. The petitioner has filed an application for interim injunction under Order 39, Rule 1

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and 2 of the Code wherein respondent/State has raised an objection that initially order for removal of encroachment against Subhash Goyal who was in possession of the suit land, had already been executed. Civil Judge, Class II, Raipur, after hearing both parties, came to the conclusion that after removal of the encroachment, the petitioner has again encroached the suit land. The possession is in dispute, balance of convenience and irreparable loss is not in favour of the petitioner. Thus, the said application was dismissed vide order dated 11-1-2007 (Annexure P/4).

3. Petitioner, being aggrieved and dissatisfied with the order passed by the Civil Judge, Class II, Raipur, filed an appeal bearing Misc. Civil Appeal No.1/2007. Xth Additional Sessions Judge, Raipur, after hearing both the parties at length, confirmed the findings recorded by the Civil Court and dismissed the appeal vide order dated 7-2-2007 (Annexure P/5)

4. I have heard the learned counsel appearing for the parties, perused pleadings, orders passed by the Courts below and the documents appended thereto. It is evident that it is not a case of clear possession of the petitioner on the suit land. The petitioner had encroached on the suit land i.e., admittedly the Government land and the possession of the petitioner on the suit land is in dispute and there is no permanent structure on the land. Thus, the orders passed by the Courts below are unexceptionable.

5. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby.

Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

6. Applying the above settled principles of law to the facts of the present case, it does not warrant to interfere with the decision passed by the Court below.

7. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju